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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,719	08/05/2003	Adam Warwick Bell		8422

7590

05/18/2004

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EXAMINER

COHEN, AMY R

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/634,719

Applicant(s)

BELL ET AL.

Examiner

Amy R Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the item of luggage, item of clothing, walking stick, smoke, projectiles, animals listed in claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

Claim 1 claim language "for deterring an attack..." should not begin the claim. Claims are usually written so that the device is claimed first and the intended use "for..." is claimed at the end of the claim.

Appropriate correction is required.

See the following patents for examples of acceptable claim language Akiyama (U. S. Patent No. 6,447,361), Thomas (U. S. Patent No. 6,351,908), and Kolar et al. (U. S. Patent No. 6,082,287).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Clayton (UK Patent Application GB 2156645A).

Clayton teaches a portable device (1) for deterring an attack by an animal upon a user, comprising a figure (3) that increases rapidly in size upon activation by the user, thereby scaring the animal and deterring the attack upon the user (Col 1, lines 5-28).

Clayton teaches the device comprising an inflatable figure (3).

Clayton teaches the device wherein the inflatable figure comprises a molded and shaped inflatable shell (Col 2, lines 78-94).

Clayton teaches the device wherein the molded and shaped inflatable shell comprises a material selected from the group consisting of: a plastic material, a rubber material and a polymer material (Col 2, lines 78-94).

Clayton teaches the device wherein the figure is inflated by a gas released from a pressurized gas container (Col 1, lines 46-52).

Clayton teaches the device wherein activation is accompanied by the production of a loud noise (Col 1, lines 29-41 and Col 2, lines 121-125).

Clayton teaches the device wherein the noise is selected from the group consisting of: an explosion, a horn, a whistle, and a shout (Col 1, lines 29-41).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton.

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein the device is fully inflated within 5 seconds.

Regarding the time of inflation: Clayton discloses a device having a time value for full inflation but does not disclose a particular value for this parameter. However, it would have been

obvious to a person having ordinary skill in the art at the time the invention was made to provide a value of full inflation within 5 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the device fully inflate within 5 seconds so that the timing of the device will be short enough and accurate enough to scare an animal as it approaches, as already suggested by Clayton (Col 1, lines 5-52).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton in view of Asaro (U. S. Patent No. 4,114,561).

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein the device is detachably associated with an item selected from the group consisting of: a knapsack, an item of luggage, an item of clothing, and a walking stick.

Asaro discloses a device wherein the device is detachably associated with an item selected from the group consisting of: a knapsack, an item of luggage, an item of clothing (Figs. 1 and 2), and a walking stick.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Clayton to be detachably associated with an item of clothing, as taught by Asaro, so that a user would have immediate access to the device in a crisis or danger situation (Asaro, Col 1, lines 5-31).

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton in view of Gaskill (U. S. Patent No. 4,890,571).

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein the device is accompanied by the production of a smell; wherein the smell is a smell similar to that of an animal.

Gaskill discloses a device (Fig. 2) wherein the device is accompanied by the production of a smell (16); wherein the smell is a smell similar to that of an animal (Col 3, lines 17-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Clayton to include production of a smell, as taught by Gaskill, so that the device would further deter an animal by emitting a smell that would naturally deter the animal from approaching (Gaskill, Col 3, lines 17-40).

9. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton in view of Gibbs (U. S. Patent No. 1,730,815).

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein activation is accompanied by the production of smoke; wherein the smoke is produced by a pyrotechnic device.

Gibbs discloses a device (Fig. 1) wherein activation is accompanied by the production of smoke; wherein the smoke is produced by a pyrotechnic device (Col 1, line 42-Col 2, line 63).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Clayton to include production of smoke, as taught by Gibbs, since both the odor and sight of fire (and hence, smoke) is frightening to animals and would deter animals from approaching (Gibbs, Col 1, line 42-Col 2, line 63).

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton in view of Stonebraker (U. S. Patent No. 6,257,146).

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein activation is accompanied by the launching of one or more projectiles.

Stonebraker discloses a device wherein a sound producing deterrent is launched in a projectile (Col 1, lines 5-22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Clayton so that the sound is produced by launching projectiles, as taught by Stonebraker, to further deter an animal by producing a very loud noise over a larger area, and since the sound of a projectile launching would frighten the animal.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clayton in view of Roberts (U. S. Patent No. 1,504,079).

Clayton discloses the device as described above in paragraph 4.

Clayton does not disclose the device wherein the figure, when inflated is shaped in the form of a type of animal selected from the group consisting of: ursine, feline, bovine, ovine, serpentine, lepine, and ungulate.

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Roberts discloses a device wherein the figure, when inflated is shaped in the form of a type of animal selected from the group consisting of: ursine, feline, bovine, ovine, serpentine, lepine, and ungulate (Figs. 1-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Clayton to be of the form of an ungulate animal, as taught by Roberts, so that the device could be used to deter a different animals depending on the fears of the animal to be deterred.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents and applications disclose devices for deterring animals or similar devices Thomas (U. S. Patent No. 6,351,908), Radovich (U. S. Patent No. 6,347,470), Kolar et al. (U. S. Patent No. 6,082,287), Groff (U. S. Patent No. 6,082,035), Bitting (U. S. Patent No. 5,826,364), McCreary (U. S. Patent No. 5,429,244), Remus (U. S. Patent No. 4,821,444), Kyoung et al. (U. S. Patent No. 4,745,859), Rodriguez (UK Patent Application GB 2126768 A), Schmidt (UK Patent Application GB 2039120 A), and Gresham (UK Patent Application GB 2026829 A).

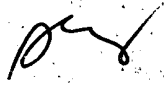
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC
May 13, 2004.


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